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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/639,467	08/13/2003	Kaoru Usui	1614.1356	6110
21171	7590	03/22/2006	EXAMINER	
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			HUGHES, DEANDRA M	
			ART UNIT	PAPER NUMBER
			3663	

DATE MAILED: 03/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/639,467	Applicant(s) USUI ET AL.	
	Examiner Deandra M. Hughes	Art Unit 3663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed 3/9/06 has been received and entered.

Specification

2. The objection to the specification is withdrawn.
3. The objection to the title is withdrawn.

Drawings

4. The objection to the drawings is withdrawn.

Information Disclosure Statement

5. The Examiner has considered information disclosure statement (IDS) filed on Mar. 9, 2006 has been considered by the examiner and is found to be cumulative to the art of record.

Response to Arguments

6. Applicant's arguments filed 3/9/06 have been fully considered but they are not persuasive.

Applicant argues that Fujita does not disclose "a total power measuring unit that measures the light power of said photo signals of all wavelengths at said measuring point" (pg. 7, lines 3-6; lines 10-11; lines 15-16).

This argument is not convincing because 1550nm is the only wavelength transmitted in the apparatus of Fujita (e.g., see figs. 3A-3C; also note col. 7, lines 45-50). Consequently, the light power of *all* wavelengths are measured. Further, as was noted in the previous office action, the claim limitation "that measures the light power of

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said photo signals of all wavelengths at said measuring point” is a functional limitation.

While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. See MPEP 2114.

Claim Rejections - 35 USC § 102

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujita (US 6,008,935 published Dec. 28, 1999).

**The references made herein are done so for the convenience of the applicant.

The prior art should be considered in its entirety.

With regard to claim 1, Fujita discloses the following:

An optical amplifying apparatus (fig. 5) *for amplifying WDMed signals*,
comprising:

- a specific wavelength measuring unit (#51) *that measures the light power of photo signals of a specific wavelength at a measuring point;*
- a total power measuring unit (#50) *that measures the light power of said photo signals of all wavelengths at said measuring point;*
- and an output control unit (#101) *that controls the output of said photo amplifying apparatus based on the light power measured by said specific wavelength measuring unit and the light power measured by said total power measuring unit.*

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With regard to claim 2, the specific wavelength measuring unit comprises a variable-wavelength optical filter (#31 and #41).

With regard to claim 3, the measuring point is positioned at one of an input stage (#31).

With regard to claim 4, the control circuit #101 receives inputs from the arithmetic processing unit.

With regard to claim 5, the control circuit #101 controls the gain of the amplifier to be constant (col. 2, line 64).

The Examiner considers the claim language identified in italics above to be a functional limitation, i.e. intended use. Further, claims 2-5 are replete with functional limitations. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art *in terms of structure rather than function alone*. Since the structural limitations have been met by the prior art, the Examiner has reason to believe that the function limitation can be performed by the prior art structure. See MPEP 2114.

Claim Objections

9. Claims 1-5 are objected to because of there is no antecedent basis for "said photo amplifying apparatus" (see claim 1, line 7 and claim 4, line 4). Appropriate correction is required.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deandra M. Hughes whose telephone number is 571-272-6982. The examiner can normally be reached on M-F, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Deandra M Hughes
Examiner
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